IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE V.V.S.RAO

WRIT PETITION NO.13870 OF 2004

Between:

A.P.S.R.T.C., Mushirabad, Hyderabad

Rep. by its Managing Director.

…PETITIONER

And

1. D.Sreedevamma, W/o.Subba Reddy

R/o.Kavali, Neelore District.

2. The Land Acquisition Officer,

(Special Tahsildar), Nellore.

…RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction especially in the nature of a Writ of Mandamus reviewing the order and decree dt.18.11.1988 made in A.S.No.2040 of 1982 on the file of this Hon'ble Court and set aside the order and decree dt.30.4.1982 made in O.P.No.44 of 1980, Court of the Principal Senior Civil Judge, Nellore.

Counsel for the Petitioner: Sri K.Harinath, SC for APSRTC

The Court at the stage of admission made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13870 OF 2004

ORDER:

Andhra Pradesh State Road Transport Corporation ('APSRTC' for brevity) filed this writ petition under Article 226 of the Constitution of India seeking the following relief:

For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court maybe pleased to issue an appropriate writ, order or direction especially in the nature of a Writ of Mandamus reviewing the order and decree dated 18.11.1988 made in

A.S.No.2040 of 1982 on the file of this Hon'ble Court and set aside the order and decree dated 30.4.1982 made in O.P.No.44 of 1980, Court of the Principal Senior Civil Judge, Nellore, and pass such other and further orders to meet the ends of justice.

The fact of the matter is not in dispute. Land in an extent of Acs.5.00 in S.No.1183/2-D of Kavali, Nellore District was acquired under the provisions of Land Acquisition Act, 1894 (for short, the Act) by the Government for the extension of APSRTC bus depot. An award being Award No.4 of 1980 dated 16.6.1980 was passed by the second respondent herein awarding a sum of Rs.9,000/- (Rupees nine thousand only) per acre. On a reference made under Section 18 of the Act being O.P.Nos.43, 44 and 45 of 1980 were disposed of by the Court of the Subordinate Judge, Kavali on 30.4.1982 determining the compensation at the rate of Rs.200/- per ankanam with other benefits. Aggrieved by the judgment and decree dt.30.4.1982 in O.P.Nos.43, 44 and 45 of 1980, the second respondent filed appeal being A.S.Nos.2040 of 1982, 771 of 1984 and 2444 of 1984 respectively before this Court. This Court initially dismissed A.S.No.2040 of 1982 on 28.11.1988. Following the same, A.S.Nos.771 and 2444 of 1984 were also dismissed by this Court on 5.2.1989. The same have become final and no further appeal has been preferred. In this writ petition, the petitioner is seeking review of the judgment of this Court in A.S.No.771 of 1984 dated 8.2.1989 in exercise of powers under Article 226 of the Constitution of India. Be it noted that there is difference in regard to appeal number in the prayers made in the petition as well as in the affidavit.

This Writ Petition is a frivolous Writ Petition and the cause is vexatious. Knowing fully well that the judgment of the learned Subordinate Judge, Kavali dated 30.4.1982 in O.P.No.44 of 1980 has been confirmed by this Court way back in 1988, and that no review is filed before this Court nor any appeal is filed before the Hon'ble Supreme Court, the Managing Director of APSRTC filed the present Writ Petition, presumably for the reason that the Managing Director has not been properly advised by the Law Department of APSRTC. The law is well settled that the judgment and order of the High Court in exercise of a different jurisdiction cannot be reviewed nor quashed in a proceeding under Article 226 of the Constitution of India.

In **Naresh Shridhar Mirajkar v. State of Maharashtra** a Nine-Judge Constitution Bench of the Supreme Court, the Supreme Court laid down that the High Court in exercise of its Certiorari jurisdiction cannot correct judicial orders passed by High Court or passed orders in relation to proceedings pending before High Court with reference to other jurisdiction. It was observed:

We have referred to these respective arguments just to indicate the extent of the field, which has been covered by learned counsel who assisted us in dealing with the present petitions. As this Court has frequently emphasized, in dealing with constitutional matters, it is necessary that the decision of the Court should be confined to the narrow points which a particular proceeding raises before it. Often enough, in dealing with the very narrow point raised by a writ petition wider arguments are urged before the Court, but the Court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it. Obiter observations and discussion of problems not directly involved in any proceeding should be avoided by courts in dealing with all matters brought

before them, but this requirement becomes almost compulsive when the Court is dealing with constitutional matters. That is why we do not propose to deal with the larger issues raised by the learned counsel in the present proceedings, and we wish to confine our decision to the narrow points which these petitions raise.

In **Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat** the above view was reiterated in the following words:

Even on the assumption that the order of the appellate Court had not merged in the order of the single judge who had disposed of the revision petition, we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the Subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

When this Court has exercised power under Section 54 of the Act and dismissed the appeals preferred by the Land Acquisition Officer, the order has become final and in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot review the order passed by this Court in A.S.No.2040 of 1982, dt.18.11.1988. Indeed, the jurisdiction under Article 226 of the Constitution of India is not available for either reviewing order of this Court passed earlier in exercise of different type of jurisdiction or to quash such order. As reference may also be made to recent Constitution Bench Judgment of the Supreme Court in **Rupa Ashok Hurra v. Ashok Hurra**. In the said case the Supreme Court considered the scope and power under Articles 32, 132, 133, 134, 136 and 226 of the Constitution to entertain a “curative petition” filed by an aggrieved person seeking, in effect, a re-hearing of a case which was already decided. The ratio laid down by the Supreme Court is as follows.

Therefore, on principle, a writ of certiorari cannot be issued to coordinate courts and a fortiorari to superior courts. Thus, a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133, and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a larger bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. Moreover, Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. Furthermore, the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

The Hon'ble Supreme Court as well as this Court deprecated the habit of public sector undertakings in resorting to casual litigation without due application of mind (See **Oil and Natural Gas Commission (ONGC) v. Collector of Central Excise and ONGC v. Collector of Central Excise**). Referring to these judgments, in the **Depot Manager, A.P.S.R.T.C. v. Kanuri Venkateswarlu**, I made the following observations.

Therefore, it is the wish of this Court that all the Law Departments/Legal branches/cells attached to State Government Undertakings or Statutory Corporation should apply their mind with reference to case law decided by the Supreme Court and this Court and in some cases with reference to the cases of same Corporation and then put up a note to the highest possible officials for obtaining approval for filing case. In that manner, the workman or other persons who obtain the benefit in the Statutory Tribunal or other forums may not be necessarily dragged to the Courts. In fact, the Hon'ble Supreme Court in **ONGC v. Collector of Central Excise** (5 supra) has categorically laid down that when there is a dispute between two Corporations, unless alternative dispute resolution methods are availed and explored, those Corporations should not rush to Courts.

In obedience to the orders of the Hon'ble Supreme Court in **ONGC v. Collector of Central Excise** (5 supra), the Cabinet Secretary to Government of India submitted a report to the effect that all disputes regardless of the type should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated. Noticing the report, the Supreme Court in ONGC v. Collector of Central Excise (6 supra) directed as under:

> We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and Ministry of Law, to monitor disputes between the Ministry and Ministry of Government of India, Ministry and Public Sector Undertakings of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the committee and its clearance for the litigation. Government may include a representative of the Ministry concerned in specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

In the light of the above directions of the Supreme Court, this Court is justified in making these remarks.

It would be appropriate and constitutional for the Government and all other Public Sector Undertakings to take measures as directed by the Supreme Court in ONGC cases supra. To avoid arbitrariness in decision making as to filing of cases in the Courts on behalf of the Government as well as the Public Sector Undertakings and to have uniform litigation management systems, it is better if the Government comes forward in right earnest with the procedure to be followed by all the officials before taking the case to the Court of law.

In the said judgment I also directed the Chief Secretary and Law Secretary to Government of Andhra Pradesh to issue necessary guidelines to be followed by all government officials and public sector undertakings while resorting to litigation before various courts.

The Writ Petition, for the above reasons, is dismissed *in limini* with exemplary costs

of Rs.20,000/- (Rupees twenty thousand only). The APSRTC shall pay the said amount to A.P.State Legal Services Authority, who shall take necessary steps for execution of this order for costs, if the amount is not paid within reasonable time.

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(V.V.S.RAO, J)

6.8.2004

Note: Dispatch copy of the order to

A.P.State Legal Services Authority, Hyderabad.

B/o. bnr

To

1. The Land Acquisition Officer,

(Special Tahsildar), Nellore.

2. The Member Secretary, A.P.State Legal Services Authority, Hyderabad.

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